IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1506 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M J BARAIYA

Versus

STATE BANK OF SAURASHTRA

Appearance:

1. Special Civil Application No. 1506 of 1992

MR MD RANA for Petitioner No. 1

MR AS VAKIL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 25/08/2004

ORAL JUDGEMENT

1.1 The petitioner, by way of this petition, has challenged the order of compulsory retirement passed against him by the General Manager (Operations) of the

respondent-bank dated 23-5-1990 (Annexure "B" to the petition) which was confirmed in appeal by the appellate authority by his order dated 18-6-1991 (Annexure "C" to the petition).

2.1 The brief facts leading to the present petition are that the petitioner while working in the capacity of Manager of the respondent-Bank at Krankech Branch, District Amreli was issued a chargesheet for certain acts of misconduct and/or irregularities as reflected in the said chargesheet produced at Annexure "A" to the petition. Thereafter, departmental inquiry was conducted and the Inquiry Officer had held that some of the charges against the petitioner are proved, but the disciplinary authority after going through the entire departmental proceedings and the findings recorded held the petitioner guilty of all the charges, and ultimately, passed the order of compulsory retirement whereupon the petitioner preferred appeal before the appellate authority which also came to be dismissed. It is against these two orders that the present petitioner has approached this Court.

3.1 Mr. Rana, learned Counsel for the petitioner has submitted that the respondent-authorities have committed an error in passing the order of compulsory retirement, as also, the order confirming the compulsory retirement passed by the appellate authority in appeal.

3.2 According to Mr. Rana some of the charges levelled against the petitioner were not proved, and therefore, the disciplinary authority ought to have issued notice to the petitioner and afforded reasonable opportunity of hearing before imposing such harsh punishment of compulsory retirement. Not only that, the disciplinary authority was required to assign reasons for disagreeing with the findings of the Inquiry Officer.

4.1 To substantiate his contention, Mr. Rana has relied on the decision rendered in the case of MANAGING DIRECTOR, ECIL, V. B. KARUNAKAR ETC ETC AIR 1994 SC 1074, wherein at paragraph 7 of the judgment it has been held as under:

" Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the Inquiry Officer's findings. The disciplinary authority is then required to consider the evidence, the report of the Inquiry Officer

and the representation of the employee against it."

4.2 Mr. Rana has next relied on the decision rendered by the Honourable the Supreme Court in the case of PUNJAB NATIONAL BANK AND ORS. V. KUNJ BIHARI MISRA reported in AIR 1998 SC 2713 wherein it has been held in paragraph 19 of the judgment that:

" Whenever a disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings".

In the present case, the disciplinary authority has agreed with the findings of the Inquiry Officer and enough opportunity is given to the petitioner. Therefore, there is no violation of principles of natural justice.

5.1 On the other hand, Mr. A.S. Vakil, learned Counsel for the respondent-bank has submitted that looking to the charges levelled against the delinquent, the authority has taken a lenient view and instead of dismissal from service, has imposed a penalty of compulsory retirement, According to him, even in appeal, the appellate authority has considered in detail the submissions made by the petitioner and has arrived at a just and reasonable conclusion by observing that there is no place for an officer in the bank's service who indulges in malpractice and connives/colludes with the borrowers/outsiders for illicit benefits and abuses his official position by shelving the basic lending norms of advances which resulted in mis-utilisation of the bank's loan and Government's subsidy. The appellate authority also observed that the grave nature of charges proved against the delinquent could have attracted the extreme penalty of dismissal and a lenient view has already been taken by the disciplinary/appointing authority by imposing upon the delinquent lesser punishment of compulsory retirement.

6.1 In support of his submissions, Mr. Vakil has relied on the judgment of the Honourable the Supreme Court rendered in the case of TARA CHAND VYAS V. CHAIRMAN & DISCIPLINARY AUTHORITY AND OTHERS reported in (1997) 4 SUPREME COURT CASES 565 wherein at paragraph 2 of the judgment it has been held that:

"Any conduct that damages, destroys, defeats or

tends to defeat the said purposes resultantly defeats or tends to defeat the constitutional objectives which can be meted out with disciplinary action in accordance with rules lest rectitude in public service is lost and service becomes a means and source of unjust enrichment at the cost of the society."

6.2 Mr. Vakil next relied on the decision of the Honourable the Supreme Court rendered in the case of ADDITIONAL DISTRICT MAGISTRATE (CITY) AGRA V. PRABHAKAR CHATURVEDI AND ANOTHER reported in (1996) 2 SUPREME COURT CASES 12, wherein while dealing with a case of temporary misappropriation, it has been held that the order of dismissal as imposed on the employee was just and proper.

6.3 Mr. Vakil next relied on the decision of the Honourable the Supreme Court rendered in the case of DISCIPLINARY AUTHORITY-CUM-REGIONAL MANAGER AND OTHERS V.NIKUNJA BIHARI PATNAIK reported in (1996) 9 SUPREME COURT CASES 69 wherein while dealing with a case of various charges of misconduct at paragraph 8 of the judgment, it has been held that the request of imposing any other punishment other than dismissal has been considered with the care it deserves, but regret inability to accede to the same.

6.4 Mr. Vakil next relied on the decision of the Honourable the Supreme Court in the case of NARAYAN DATTATRAYA RAMTEERTHAKHAR v. STATE OF MAHARASHTRA AND OTHERS reported in (1997) 1 SUPREME COURT CASES 299 wherein, even in case of misappropriation of a very small sum of Rs.1440/-,it has been held that the petitioner having committed misappropriation of the public money his removal from service is an appropriate order and that there is no illegality in the order passed by the Tribunal.

6.5 Mr. Vakil finally relied on the recent decision of the Honourable the Supreme Court rendered in the case of REGIONAL MANAGER U.P.S.R.T.C. ETAWAH AND OTHERS v. HOTI LAL AND ANOTHER reported in AIR 2003 SC 1462 = (2003 SCC (L&S) 463), wherein while dealing with a case of misappropriation, it has been held that where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, highest degree of integrity and trustworthiness is must and unexceptional and when there is gross misconduct/dereliction of duty on the part of the employee, no leniency can be shown to him.

7.1 I have considered the arguments advanced before

me by the learned Counsel for both the sides, as also, the various pronouncements cited before me by them.

8.1 In the instant case, looking to the charges proved against the petitioner-employee who was Manager in the respondent-bank of misutilisation of banks loan and Government subsidy by creating false identity which amounted to gross misconduct and dereliction of duty, the view taken by the respondent-authorities in passing the order of compulsory retirement of the petitioner-employee is perfectly justified warranting no interference by this Court.

8.2 In this view of the matter, the authorities cited before me by the learned Counsel for the petitioner will not be of any help to the petitioner, more particularly when, the points which are canvassed before me by Mr. Rana have not been raised before the appellate authority and such pleas cannot be permitted , at this stage, in the case of a corrupt officer who has misappropriated or has misutilised the public money.

9.1 In the result, the petition fails and is dismissed. Rule is discharged.

(K.S.Jhaveri,J.)

stanley-ksj.